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ATTORNEY GENERAL

OFFICE OF  
**THE ATTORNEY GENERAL**  
AUSTIN, TEXAS

Honorable Lee Brady  
Commissioner  
Department of Banking  
Austin, Texas

Dear Sir:

Opinion No. 0-2302

Re: S. B. 427, Acts 46th Legis-  
lature - validity of provi-  
sion for reversion of surplus  
fees to the General Revenue  
Fund.

Your letter of April 27, 1940, requests the opinion  
of this department upon the following questions:

"1. Is the provision of the General Approp-  
riation Bill of 1939, providing for the reversion  
of surplus fees and unexpended balances to the  
General Revenue Fund violative of Section 7 of  
Article 8 of the Constitution of Texas?

"2. If the surplus and unexpended balances  
remaining on hand at the end of the fiscal year  
do not revert to the General Revenue Fund, then  
will such surplus and unexpended balances retain  
their character as such so as to be subject to  
the jurisdiction of the Limited Payments Board  
after the beginning of the second year of the  
biennium, or will such surpluses or unexpended  
balances be treated simply as an initial collection  
for the second year of the biennium?"

Article 362, Revised Civil Statutes, 1925, provides  
as follows:

"Examination Fees. - Except as to savings  
banks, the expense of every general and special  
examination shall be paid by the corporation exam-  
ined in such amount as the Commissioner shall cer-  
tify to be just and reasonable, and assessments

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therefor shall be made by the Commissioner upon the banks examined in proportion to assets or resources held by the banks upon the dates of the examination of the various banks."

Article 363, Revised Civil Statutes, 1925, provides as follows:

"All funds collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this Title shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury."

Senate Bill 427, Acts of the 46th Legislature, includes the following as a special rider following the appropriation made for the State Banking Department:

"Subject to the limitations set forth in the provisions at the end of this Act, all appropriations herein made for the State Banking Department shall be paid out of their receipts, and the Commissioner shall reduce his expenditures so as not to exceed the actual receipts collected . . ."

The general rider appended to Senate Bill 427, Acts of the 46th Legislature, in the paragraph styled "Limitation of Payments", includes the following sentence:

"All surplus fees, receipts, special funds, or other available funds on hand at the end of each year of the biennium shall revert to the General Revenue Fund of this State unless otherwise provided herein."

Section 7 of Article 8 of the Constitution of the State of Texas reads:

"The Legislature shall not have power to borrow or in any manner divert from its purpose any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold, or in

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any manner divert from its purpose any special fund or any part thereof."

It will be observed that the constitutional provision has application only to special funds. An examination of the statutes quoted above with reference to the examination fees collected by the Banking Department reveals that no special fund is created and that the constitutional provision therefore has no application. The general law does not dedicate the assessments collected to the payment of the expenses of examining the banks, but exacts the assessments by way of a charge for services rendered and requires that they be paid directly into the General Revenue Fund of the State, by way of reimbursement to the State for expenses incurred by the State in examining the various banking institutions. The appropriations to the Banking Commissioner are paid by warrants upon the General Fund. The amount of the assessments collected and deposited in such fund simply measures and limits the authority to expend the appropriation made from the General Fund. The obvious purpose is to compel the Banking Commissioner to levy and collect assessments sufficient in amount to insure complete reimbursement to the General Revenue Fund.

What we have said above constitutes a sufficient answer to your first question. With respect to your second question, you are advised that the surplus or unexpended balances of the assessments collected by the Banking Commissioner will not retain their character as such so as to be subject to the jurisdiction of the Limitation of Payments Board after August 31, 1940. The obvious purpose of the sentence quoted from the Limitation of Payments paragraph appearing in the general rider to Senate Bill 427 is to deprive the Limitation of Payments Board of jurisdiction over surplus fees, receipts, special funds, and other available funds on hand at the end of each year of the biennium.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ R. W. Fairchild  
Assistant

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APPROVED JUN 14, 1940

/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS